IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.698 OF 1989

The State of Maharashtra ...Appellant
vs.
1.Ragho Bama Pavanekar
2.Mahadeo Bama Pavanekar
3.Ramdas Bama Pavanekar
4.Muktabai Bama Pavanekar
5.Indubai Balaram Bhopi
6.Sundarbai Dashrath Patil through
Power of Attorney Mr.Ambaji Gopal Mali ...Respondents

WITH
FIRST APPEAL NO.1081 OF 1989

1.Ragho Bama Pavanekar
2.Mahadeo Bama Pavanekar
3.Ramdas Bama Pavanekar
4.Muktabai Bama Pavanekar
5.Indubai Balaram Bhopi
6.Sundarbai Dashrath Patil through
Power of Attorney Mr.Ambaji Gopal Mali ...Appellants

vs.

The State of Maharashtra ...Respondent

Ms Geeta Mulekar, A.G.P. for State in both the Appeals
Mr.Rajendra Pai for the Respondents in F.A.NO.698/1989 and for the Appellants in F.A.No.1081/1989.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 5,2007.

ORAL JUDGMENT:

1. These Cross Appeals can be disposed of by a common Judgment. In both the Appeals, the challenge is to the Judgment and Award dated 31st August 1988 passed by the learned Civil Judge (Senior Division), Raigad in a reference under section 18 of the Land Acquisition Act,1894 (hereinafter referred to as the said Act of 1894). The acquisition relates

to the land admeasuring 1,700 sq.meters at village Kamothe, Taluka Panvel, District Raigad. By a notification under section 4 of the said Act of 1894 on 3rd February 1970, the said land was notified for acquisition. The acquisition was for development of satellite city of Navi Mumbai. The Award under section 11 of the said Act was made on 17th September 1986. The Special Land Acquisition Officer offered the market value at the rate of Rs.3/- per sq. meter. In the reference Application, claim made by the claimants was at the rate of Rs.20/- per sq. meter. The learned Trial Judge awarded the market value at the rate of Rs.16/- per sq. meter and granted statutory benefits.

2. The learned A.G.P. in support of the First Appeal No.698 of 1989 submitted that the market value fixed by the Reference Court is on the higher side considering the fact that on the date of acquisition, the land was an agricultural land. The learned Counsel for the claimants placed reliance on the decision of a Division Bench of this Court dated 25th and 26th February 1993 in First Appeal No.754 of 1986 in the case of Nama Padu Hudar and others Vs. State of Maharashtra. He submitted that as the said decision has attained finality, the claimants are entitled to enhancement in compensation. He pointed out that while awarding the interest under section 28 of the said Act from the date of expiry of a period of one year from the date of taking possession, interest at the rate

of 15% p.a. ought to have been awarded.

3. I have considered the submissions. In case of Nama Padu Hudar (supra), the Division Bench of this court decided the Appeals arising out of references under section 18 of the said Act of 1894 pertaining to the lands situated at village Kamothe, Taluka Panvel, District Raigad. The lands subject matter of the said Appeals were also notified under section 4 of the said Act of 1894 on 3rd February 1970. The purpose of acquisition of the said lands was also for development of satellite city of Navi Mumbai. For the purpose of fixing the market value, the Division Bench divided the land subject matter of the Appeals before it into five categories depending upon the distance of the acquired lands from Bombay Pune highway or from Z.P. Road or from Gaothan. The said decision has attained finality.

4. Coming to the facts of the present case, the claimants examined Shri Jivan Kulkarni as an expert valuer. He stated that the distance between the acquired land from Bombay Pune highway is 1840 meters. There is no serious challenge to the said aspect stated in the report submitted by Shri Jivan Kulkarni. The Division Bench in the case of Nama Padu Hudar (supra) held that the market value of the acquired lands which are situated 800 metres to 2200 metres away from the highway was at the rate of Rs.20/- per sq.meter. There is no reason

why the decision of the Division Bench in case of Nama Padu Hudar (supra) should not be applied to this case. Therefore, the claimants in this case are entitled to market value at the rate of Rs.20/- per sq. meter.

5. The reference court while passing the Award under section 28 of the said Act of 1894 has completely overlooked the provisions of section 28 of the said Act which reads thus :

"28. Collector may be directed to pay interest on excess compensation -

. If the sum which, in the opinion of the Court, the Collector ought to have awarded compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of (nine per centum) per annum from the date on which he took possession of the land to the date of payment of such excess into Court :

. [Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum

per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry].

The learned Judge ought to have granted interest at the rate of Rs.15% p.a. on the compensation amount from the date on which the period of one year expired from the date of taking possession of the acquired land. The award needs modification to this extent.

6. Hence, the Appeal preferred by the State must fail and cross Appeal preferred by the Respondents will have to be allowed.

7. Hence, I pass the following order :

FIRST APPEAL NO.698 OF 1989

i) First Appeal No.698 of 1989 is dismissed. The Appellant is directed to pay costs of the Appeal to the Respondents.

FIRST APPEAL NO.1081 OF 1989

i) The impugned Judgment and Award is modified. It is held that the original claimants are entitled to market value

at the rate of Rs.20/- per sq.meter.

ii) The claimants are also entitled to statutory benefits under sections 23(1-A),23 (2) and 28 of the Land Acquisition Act,1894 as observed in the Judgment.

iii) The Claimants will be entitled to proportionate costs of Reference proceedings as well as this Appeal from the State Government.

iv) The Reference Court will calculate the amount of compensation payable to the claimants within a period of four months from the date of receipt of the writ of this Judgment.

v) The Appeal is accordingly allowed.

vi) Writ to be sent forthwith.

JUDGE